MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2018/2019

UCO3622 – COMPANY LAW II

(All Sections / Groups)

5 MARCH 2019
Reading Time : 2.30 p.m. – 2.45 p.m.
(15 Minutes)
Answering Time: 2.45 p.m. – 5.45 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 5 Questions only.

3. Answer **ALL** questions in **PART A** and **ONE (1)** question in **PART B**. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of the following statutes into the exam venue :

   i. COMPANIES ACT 2016
   ii. CAPITAL MARKETS AND SERVICES ACT 2007

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

PART A : ANSWER ALL QUESTIONS

QUESTION 1

Richard and Smith are the directors of Apex Sdn Bhd (ASB). The core business of the company is Freight Delivery Services. Both Richard and Smith are also the shareholders of ASB and each holds 35 percent of ASB's issued capital. The other shareholders are Charles, Rex and Henry, who each hold 10 percent of the issued capital.

ASB has been performing very well and in the last three years has consistently made substantial profits. However, to date no dividends had been declared. Recently, Henry discovered that Richard and Smith have been squandering the funds of ASB on matters not at all related to the well being of the company. These includes:

i) the purchase of a luxury yacht at the cost of RM3 million.

ii) making consistent withdrawals from ASB's funds for their personal use.

When Charles, Rex and Henry confronted Richard and Smith about the above transactions, they were told that it was within the powers of the directors to run the business of ASB. Charles, Rex and Henry wish to know whether they can institute an action on behalf of ASB to seek for the relevant remedies in the event the company itself does not do so.

Advise Charles, Rex and Henry.

(Total: 25 marks)

QUESTION 2

> "The only right of voting which is attached in terms to the shares of that class is the right to have one vote per share pari passu with the other ordinary shares of the company for the time being issued. The right has not been taken away. Of course, if had been attempted to reduce that voting right, eg by providing or attempting to provide that there should be one vote for every five of such shares, that would have been an interference with the voting rights attached to that class of shares."

The Court of Appeal decided in the case of Greenhalgh v Arderne Cinema Ltd [1946] 1 All ER 512.

With reference to the relevant statutory provisions and case law, assess and criticise the above statement.

(Total: 25 marks)

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QUESTION 3

Prohibition against a company providing financial assistance to acquire its own shares has been criticized as impeding beneficial commercial transactions. The interpretation of the scope of 'financial assistance' in decided cases lead this area further into uncertainty and difficulty. Although the Companies Act 2016 has retained the general prohibition, the introduction of 'whitewash exemption' has loosen the prohibition and made several types of transactions easier to structure and effect.

With reference to the relevant statutory provisions and case law, assess and criticise the above statement.

(Total: 25 marks)

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PART B : ANSWER ONE QUESTION ONLY

QUESTION 4

On 1st February 2018, Shenfield Bank Berhad (SBB) granted a loan of RM1.5 million to Brentwood Sdn Bhd (BSB). The debenture provided, *inter alia*, that :

(i) As security for the loan, a charge is created over all the company's undertakings whatsoever and wheresoever situate both present and future, including but not limited to raw materials and stock in trade in favour of SBB.

(ii) the liability secured is for the benefit of BSB.

(iii) the creation of any other charges ranking in priority to or *pari passu* with the debenture is restricted, unless with SBB's prior written consent.

The debenture was duly registered with the Companies Commission of Malaysia (CCM).

In March 2018 and July 2018, BSB created two subsequent charges over its factory equipments and heavy machineries respectively in favour of Romford Bank Berhad (RBB) to secure 2 loans granted to it. Both were duy registered with CCM.

In September 2018, a winding up petition was presented against BSB and BSB was subsequently wound up in December 2018.

Advise all parties on the nature, validity and priority of the charges.

(Total: 25 Marks)

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QUESTION 5

Harold Wood Berhad (HWB) issued a debenture creating a floating charge over all its assets present and future in favour of Gidea Bank Bhd (GBB) as a security for a facility agreement. The debenture deed dated 2nd April 2018 provided that:

"Without prejudice to any law which may have a similar effect, the floating charge created in favour of GBB will automatically be converted (without notice) with immediate effect into a fixed charge as regards all the assets subject to the floating charge if:

a) the Chargor creates or attempts to create any security (other than any security permitted under by GBB), over any of the charged assets

b) appointment of receiver and manager; or

c) an order is made or a resolution is passed for the winding up or dissolution in respect of the charger."

The charge was duly registered with the Companies Commission of Malaysia (CCM). In September 2018, HWB created a fixed charge over a Waste Handler Track Loader in favour of Upminster Bank Berhad (UBB) to secure a loan granted to it. UBB was not aware of the existence of the prior charge. Due to inadvertent error, the charge in favour of UBB was not registered with CCM.

Advise HWB on the validity and the priority of charges.

(Total: 25 Marks)

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